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Commission on Federal Paperwork—Compensation and Travel of
Borrowed Professional Staff - B-182087-O.M.

This is in response to your undated memorandum captioned "Compensation for Borrowed Professional Staff," and your subsequent memorandum dated September 29, 1975, captioned "Compensation and Travel Reimbursement for Professional Staff Obtained from Other Sources." Both deal with the use of services of persons who are not employees of the Commission on Federal Paperwork (Commission), which was established by Public Law No. 93-556, December 27, 1974 (hereinafter referred to as "the Act"). Your memoranda raise six distinct problems which are discussed below.

1. The first problem is whether there is any limitation on the length of time which an agency may detail an employee to the Commission. Section 7(b) of the Act authorizes the head of each department or agency of the Federal Government to provide to the Commission such services as requested by the Commission on such basis, "reimbursable or otherwise," as may be agreed upon. We view this section as providing independent authority for the detail of such employees to the Commission. Since the Act contains independent authority for details to the Commission, any limitations not contained in the Act are not applicable. Section 7(b) of the Act contains no express time limitation.

2. The second problem proposes reimbursement by the Commission to the employee's agency of the detailed employee's basic pay, not including "retirement, hospitalization, etc." Section 7(b) of the Act expressly states that services will be provided "on such basis, reimbursable or otherwise, as may be agreed upon * * *." Therefore, if such an agreement is entered into, we see no legal objection to the proposal.

3. The third problem deals with relocation expenses for Federal employees detailed to the Commission. The Act contains no explicit authority permitting the payment of relocation expenses to employees of the Commission. Furthermore, if the Commission, is a legislative agency, it does not come within the scope of subchapter II, chapter 57, title 5, United States Code, which contains the authority for payment

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of certain relocation expenses to Federal employees. Section 5721 defines the term "agency" as, inter alia, an executive agency. That term, as defined in 5 U.S.C. § 105^v(1970), serves to exclude legislative agencies, with the exception of the General Accounting Office. See 5 U.S.C. § 104^v(Supp. III).

4. The fourth question involves procurement of staff from state and local agencies. The provisions of subchapter VI of chapter 33, title 5, United States Code, added by Public Law No. 91-648, January 5, 1971, Intergovernmental Personnel Act, ^{42 USC,} ⁴⁷⁰¹⁻¹⁰⁰⁷ would not be applicable to the Commission if it is a legislative agency since the provisions of that Act are available only to heads of "executive agencies." However, the services of employees of state and local governments may be obtained by procuring such services as experts and consultants or as individuals serving without pay or at \$1 a year, as authorized by section 6(c) of the Act. Travel and per diem to such individuals may be paid in accordance with the provisions of 5 U.S.C. § 5703, ^{44 USC,} ³³⁰¹⁻¹⁰⁰¹ as enacted by Public Law No. 94-22, ^{50 USC,} ⁵⁷⁰¹⁻¹⁰⁰¹ May 19, 1975, since section 6(c) ^{of the Act} permits employment of individuals under the provisions of 5 U.S.C. § 3109^v with or without compensation.

5. The fifth question is whether the Commission should accept free services from the private sector and from state and local governments. Section 665(b), ^vtitle 31, United States Code (1970), prohibits any officer or employee of the United States from accepting voluntary services for the United States, except in cases of emergency involving the safety of human life or the protection of property. However, in 27 Comp. Gen. 194^v(1947), we held that, quoting from the syllabus:

"In the absence of a statute specifically fixing the amount to be paid in the particular case, an expert or consultant whose services are procured by contract on a temporary or intermittent basis without regard to civil service or classification laws, in accordance with section 15 of the administrative expense statute of August 2, 1946, may agree to serve without compensation and thereafter be estopped from asserting any valid claim for compensation on account of services performed."

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Section 6(c) of the Act gives the Commission authority to fix compensation for personnel without regard to the provisions of title 5, United States Code. Accordingly, it is our opinion that the rule of that decision applies to personnel appointed by the Commission. Such personnel may agree to serve without compensation, and, therefore, be estopped from asserting any valid claim for compensation for the services performed.

Likewise, we have previously held that gratuitous services rendered pursuant to a prior contract or agreement by a private agency to the Government does not violate the provisions of 31 U.S.C. § 665(b). In discussing the scope of this section, we held that the section has been construed as being applicable to volunteer service not rendered pursuant to prior contract or agreed to be gratuitous and, therefore, likely to be the basis for a future claim. The purpose of the section is to prevent the incurring of financial obligations over and above those authorized by the Congress. 30 Op. Atty Gen. 51, 7 Comp. Gen. 810 (1928), and 23 id. 900 (1944).

Similarly, in decision B-13378, November 20, 1940, we held that the Secretary of Commerce could accept gratuitous services from an agency created by various professional social science associations pursuant to a cooperative agreement under which such services would be rendered free of cost to the United States. We believe that application of the decision is not limited to "professional social science associations," but may be applied to the private sector generally. Accordingly, we are of the opinion that the provisions of 31 U.S.C. § 665(b) do not pose a legal obstacle to the Commission's acceptance of free services from the private sector, providing such services are agreed to be gratuitous in advance. Any such agreement should be properly documented.

6. The final matter is whether conflict-of-interest provisions apply to personnel employed by the Commission as experts and consultants or as persons serving without compensation. In this connection, the above-cited decisions did not discuss the aspect of any conflict of interest which might arise where personnel from the private sector who are performing gratuitous services continue to receive compensation from their employer.

The applicable provisions concerning conflicts of interest are found in chapter 11, title 18, United States Code. We are unaware of any reason why, generally, these provisions would not be for application

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to the Commission. However, since these provisions are criminal in nature, this Office is without authority to make any determinations with regard thereto. Jurisdiction lies primarily with the agency involved and the Department of Justice. However, for reference we attach a copy of the guidelines promulgated by the Civil Service Commission regarding conflicts of interest. Federal Personnel Manual, chapter 735(1969). Particularly to be noted are those provisions which deal with special Government employees. Also, reference should be made to Comptroller General Order No. 1.21, captioned "United States General Accounting Office Employee Responsibilities and Conduct." The Commission may wish to adopt regulations which are substantially in conformance with the above two regulations.

Subsection 209(a), title 18, United States Code (1970), prohibits the acceptance of any contribution to or supplementation of salary as compensation for his services as an officer or employee of the United States Government. The subsection also prohibits an individual, partnership, association, corporation, or other organization from paying or contributing to, or supplementing the salary of any such officer or employee.

Subsection 209(a) states:

"This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such."

Subsection 202(a) defines "special Government employee" as:

"* * * an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis * * *."

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Thus, experts and consultants and officers and employees serving without compensation employed by the Commission for less than the specified period in subsection 202(a) would appear to be exempt from the provisions of subsection 209(a) as would be the employers of such personnel.

Copies of all cited decisions of the Comptroller General are attached.

Attachments